



Department of Energy

Idaho Operations Office
850 Energy Drive
Idaho Falls, Idaho 83401-1563

March 4, 2003

Mr. Darrell G. Early,
Deputy Attorney General
Office of the Attorney General State of Idaho
1410 N. Hilton, Second Floor
Boise, Idaho 83706

Ms. Cyndy Mackey
Assistant Regional Counsel
Environmental Protection Agency
Mail Stop ORC - 58
EPA Region 10
1200 6th Avenue
Seattle, WA 98101

SUBJECT: Final Original Copy of Agreement to Resolve Dispute Waste Area Group 3,
Operable Unit 3 -13 – OCC-03-025

Dear Mr. Early and Ms. Mackey:

Enclosed is your fully executed original copy of the Agreement to Resolve Dispute, effective February 21, 2003. Thank-you for your cooperation and assistance in bringing this matter to a prompt resolution.

Sincerely,

A handwritten signature in black ink, which appears to read "Brett R. Bowhan", is written over the typed name.

Brett R. Bowhan
Deputy Chief Counsel

Enclosure

cc: Orville Green, IDEQ, w/o enc.
Michael Gearheard, EPA Region 10, w/o enc.
Ann Williamson, EPA Region 10, w/o enc.

OCC-03-025
March 4, 2003

EXTERNAL bcc DISTRIBUTION:

Ray Swenson, BBWI, MS-3940, w/enc.
Sue Stiger, BBWI, MS-3898, w/enc.

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R. Hall, MS-1222, w/enc
R. Stallman, MS-1203, w/o enc.
L. Green, MS-1222, w/o enc.

CONCURRENCE:

RECORD NOTES:

1. This letter was written to distribute the Final Original Copy of Agreement to Resolve Dispute Waste Area Group 3, Operable Unit 313.
2. This letter was written by B. Bowhan
3. This letter/memo closes OATS number N/A
4. The attached correspondence has no relation to the Naval Nuclear Propulsion Program.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, IDAHO DEPARTMENT
OF ENVIRONMENTAL QUALITY, UNITED STATES DEPARTMENT OF ENERGY

IN THE MATTER OF:

THE DECEMBER 04, 2002, NOTICE OF
VIOLATION AND THE DECEMBER 20,
2002, STATEMENT OF DISPUTE

THE U.S. DEPARTMENT OF ENERGY
IDAHO NATIONAL ENGINEERING AND
ENVIRONMENTAL LABORATORY,
IDAHO FALLS, IDAHO,

)
)
) AGREEMENT TO
)
) RESOLVE DISPUTE
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1. INTRODUCTION

1.1 This "Agreement to Resolve Dispute" (Agreement) is a settlement of a dispute arising under the 1991 Federal Facility Agreement and Consent Order (FFA/CO) at the Idaho National Engineering and Environmental Laboratory (INEEL) related to the Notice of Violation (NOV) issued by the Environmental Protection Agency, Region 10 (EPA) dated December 4, 2002. The parties to this Agreement (the parties) are the U.S. Environmental Protection Agency (EPA), the Idaho Department of Environmental Quality (IDEQ) and the U.S. Department of Energy (DOE).

1.2 The NOV alleged a violation of failing to submit the Remedial Action Report for Operable Unit (OU) 3-13, Group 1 (RA Report) in accordance with the established deadline. Specifically, the NOV alleged violations due to DOE's failure to complete work as required under the Remedial Design / Remedial Action (RD/RA) Work Plan for the Group 1 Tank Farm Interim Action.

1.3 The parties have resolved all allegations in the NOV and this dispute by agreement, which includes: (1) payment of a stipulated penalty in the amount of \$175,000, (2) revised milestones and scope for the Tank Farm Soil Interim Action (Interim Action); (3) revision of the Record of Decision (ROD) for OU 3-13 through an Explanation of Significant Differences (ESD); and (4) an option for DOE, in collaboration with the EPA and IDEQ, to evaluate and accelerate the determination and implementation of the permanent remedy for the Tank Farm Soil, or in the alternative, to implement the remaining portions of the Tank Farm Soil Interim Action by installing an infiltration barrier over the remaining areas in the tank farm in stages as the tanks are closed.

1.4 This Agreement is expected to have the following benefits:

1.4.1 The flux of radionuclide contamination migrating to the groundwater is expected to be significantly reduced: The remedial action objective was to

reduce the overall infiltration of precipitation in the tank farm by approximately 80% in order to minimize the flux of contaminants to the groundwater (DOE/ID-10660, OU 3-13 Record of Decision Declaration, Page IV). Completing the interim action as modified by this Agreement is expected to reduce recharge to the perched water in the area by over 99% of the estimated contamination released to the soil in the Tank Farm. By placing infiltration barriers over these hot spots, the infiltration of precipitation through the contaminated soil and the resultant contaminant flux is expected to be reduced significantly, which may surpass in achievement the intent of the interim action to minimize contaminant migration to the aquifer.

- 1.4.2 The overall risk reduction in the Tank Farm may be accelerated: DOE believes this approach continues to support DOE's desire to address the risk associated with the tank liquids on an accelerated schedule as established in the "Environmental Management Performance Management Plan for Accelerating Cleanup of the INEEL" in parallel with reducing the risks from the contaminated soils. Therefore, the overall risk associated with the tank farm may be addressed earlier than previously planned. This approach also facilitates the DOE, EPA, and IDEQ joint efforts to work towards acceleration of a final remedy.

1.5 This Agreement is limited to the dispute arising from the December 4, 2002 NOV. Nothing in this Agreement shall be construed to affect or relate to any other operable unit except as specifically provided herein. Nothing herein shall be construed to imply prior approval of any remedy to be selected for OU 3-14.

2. BACKGROUND

2.1 On December 9, 1991, EPA, IDEQ and DOE entered into the FFA/CO for the investigation and cleanup of INEEL. The FFA/CO was entered into pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq., and the Hazardous Waste Management Act, Idaho Code § 39-4401, et seq.

2.2 The FFA/CO establishes requirements for: (a) identification and performance of interim cleanup actions, (b) performance of investigations to determine fully the nature and extent of threats to public health or welfare or the environment caused by releases of hazardous substances, (c) performance of studies to identify, evaluate and select cleanup actions, (d) implementation of selected cleanup actions and (e) compliance with federal and state hazardous waste laws.

2.3 The INEEL site is divided into ten waste area groups (WAGs). Each WAG contains several operable units (OU). The operable units generally cover specific geographic areas at the site, but may cover specific activities.

2.4 The Record of Decision (ROD), dated October 1999, for OU 3-13, Group 1, established an interim action for contaminated soil surrounding underground storage tanks (Tank Farm Soil) at WAG 3, the Idaho Nuclear Technology and Engineering Center.

2.5 The permanent remedy for the Tank Farm Soil is currently under OU 3-14.

2.6 The ROD for OU 3-13, Group 1, required the installation and maintenance of institutional controls to prevent public exposure to the Tank Farm Soil and engineering controls to reduce water infiltrating the Tank Farm Soil. The engineering controls to reduce surface water infiltration included installation of a temporary cover over the tank farm area to divert precipitation, installation or improvement of diversion channels, installation of a lined evaporation pond, and other drainage improvements to minimize moisture infiltration and mobilization of contaminants.

2.7 A schedule for completion of the interim action activities was established in the RD/RA Work Plan. Pursuant to that schedule, activities were to be completed and a Remedial Action Report (RA Report) was due by not later than July 29, 2002.

2.8 DOE requested an extension by letter dated August 30, 2001, which was denied by letter dated September 6, 2001 (IDEQ), and September 19, 2001 (EPA).

2.9 During the week of January 28, 2002, EPA conducted an inspection of the Idaho National Environmental and Engineering Laboratory (INEEL).

2.10 Although DOE submitted an Interim RA Report on July 26, 2002, it did not demonstrate compliance with the requirements of the RD/RA Work Plan, and therefore, of the FFA/CO. The Interim RA Report described activities that were not completed pursuant to the requirements of the RD/RA Work Plan.

2.11 EPA issued a Notice of Violation and Penalty Assessment dated December 4, 2002, as described in Sections 1.1 and 1.2. DOE responded with a Statement of Dispute, dated December 20, 2002, elevating this matter to the Dispute Resolution Committee (DRC) under the FFA/CO Part IX. On January 13, 2003, EPA transmitted a Statement of Position in response to the DOE Statement of Dispute.

2.12 The DRC has resolved this dispute by this Agreement, which fulfills the requirement for a written decision signed by all Parties under paragraph 9.2(e) of the FFA/CO.

AGREEMENT

3. The parties hereby agree to the following terms and conditions to resolve the NOV and dispute. The enforceable milestones (i.e., deadlines) in the OU 3-13, Group 1 RD/RA Work Plan are superseded by this Agreement.

3.1 DOE will continue to pursue acceleration of tank cleaning and closures.

3.2 DOE shall complete the following Interim Action Milestones:

- 3.2.1 Complete and put into operation the following work outside the tank farm fence: lining ditches, culvert installation, and lining the evaporation pond. This work shall be completed, and DOE will provide a letter to the IDEQ and EPA certifying completion of this work, by the planned date of 9/30/03 with an enforceable milestone date of 12/31/03.
- 3.2.2 Place an infiltration barrier¹ over the affected areas of release sites CPP-28, CPP-31, and CPP-79 in the tank farm, and provide a letter to the IDEQ and EPA certifying completion of this work, by the enforceable milestone date of 9/30/04. The installation of the barrier is expected to reduce the infiltration of precipitation through the principal soil contamination areas by significantly more than 80%, meeting the intent of the interim action.

3.3 DOE shall complete, by 12/31/03, a revision of the data quality objectives (DQOs) as a modification to the existing RI/FS Work Plan for the OU 3-14 RI/FS. This work is intended to identify data gaps and evaluate the feasibility of accelerating the OU 3-14 ROD for the Tank Farm Soil.

- 3.3.1 DOE, EPA, and IDEQ agree to work collaboratively to expedite a phased implementation of the Tank Farm Soil permanent remedy. DOE, EPA, and IDEQ agree to refine the planned date for the OU 3-14 ROD after the DQOs are established. Until that date can be more accurately determined, DOE-ID agrees to a planned date of 12/31/06 for completion of the OU 3-14 ROD. The current enforceable deadline date for the draft ROD is May 2010. The sequencing of tank closures and the schedule for Tank Farm Soil remediation will be integrated to occur in stages.
- 3.3.2 If any party deems it infeasible to pursue an early permanent remedy as described in § 3.3.1 above, DOE will install an infiltration barrier over the remaining areas in the Tank Farm as the tanks are closed.
- 3.3.3 DOE will submit the draft Remedial Action Report that will include a draft Tank Farm Interim Action Operations & Maintenance (O&M) Plan, by the enforceable milestone date of 5/31/05 for that portion of work set forth in § 3.2.1 and § 3.2.2. If it is deemed infeasible to pursue an early permanent remedy under § 3.3.2 above, the O&M Plan will include a plan and schedule for installation of the infiltration barrier over the remaining

¹ The term "infiltration barrier" means any of the low permeable surfaces such as concrete, asphalt, HDPE, polyurea, or temporary enclosures that achieve the Remedial Action Objectives identified in the OU 3-13 ROD. Should changes in the type of low permeability barrier be contemplated from those identified in the Tank Farm Interim Action RD/RA Work Plan and per the results of DOE's treatability study, DOE will propose revisions in accordance with the FFA/CO change process.

areas in the Tank Farm as the tanks are closed. O&M will be per the FFA/CO.

3.4 DOE agrees to separate out the non-Tank Farm Soil components from the OU 3-14 RI/FS (CPP-23, CPP-61, CPP-81, CPP-82) and prepare a draft ESD to the OU 3-13 ROD to address these components, to be submitted to the IDEQ and EPA by the enforceable milestone date of 12/31/03. In addition, DOE may, in the draft ESD, propose addressing newly identified WAG 3 CERCLA sites. DOE may also, in the draft ESD, propose addressing the WAG 3 final groundwater decision as part of OU-3-13. Agency review of the ESD shall be as specified in the FFA/CO for a primary document and nothing herein shall be deemed or construed as a pre-approval of the matters proposed in the ESD.

3.5 Payment of Stipulated Penalty: DOE shall, within ninety (90) days of the effective date of this Agreement pay a stipulated penalty to EPA in the amount of One Hundred Seventy Five Thousand Dollars (\$175,000). The stipulated penalty payment shall identify INEEL, site 10A9, and shall be sent to the following address with a copy to the EPA Remedial Project Manager:

Mellon Bank
EPA Region-10
ATTN: Superfund Accounting
P. O. Box 360903M
Pittsburg, PA 15251

3.6 General Provisions

3.6.1 In the event that DOE fails to comply with any provision of this Agreement, EPA and IDEQ reserve the right to pursue any remedy available under the FFA/CO, including those remedies reserved under part XXXI of the FFA/CO.

3.6.2 Only the enforceable milestone dates expressly so established by this Agreement are enforceable dates. All other dates or schedules discussed in this Agreement, including planned dates, are not enforceable dates and shall not be subject to penalties.

3.6.3 The four enforceable milestone dates established by this Agreement are as follows:

(a) 12/31/03 – per § 3.2.1 complete and put into operation the work outside the tank farm fence and provide a letter to the IDEQ and EPA certifying completion of this work


(b) 12/31/03 – per § 3.4 submit draft ESD to EPA and IDEQ

(c) 09/30/04 – per § 3.2.2 place infiltration barrier and provide a letter to the IDEQ and EPA certifying completion of this work

(d) 5/31/05 – per § 3.3.3 submit draft Remedial Action Report

- 3.6.4 The enforceable milestone dates set forth in this Agreement shall be subject to stipulated penalties in accordance with part XI of the FFA/CO. The parties agree that this Agreement resolves all disputed matters relating to the NOV and this dispute. EPA and IDEQ agree that they will not in the future compel compliance or assess stipulated penalties with respect to the previous deadlines that have been superseded by this Agreement.
- 3.6.5 This Agreement only addresses the Tank Farm Soil Interim Action and the scope of the OU 3-14 RI/FS as set forth in § 3.4, and shall not affect any other milestones or enforceable requirements under the FFA/CO.
- 3.6.6 No provisions of this Agreement shall be interpreted to require obligation or payment of funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.
- 3.6.7 Nothing in this Agreement shall constitute an admission on the part of the parties, in whole or part, in any proceeding except in a proceeding to enforce this Agreement.
- 3.6.8 The effective date of this Agreement shall be the date on which it has been signed by all three signatories.
- 3.6.9 EPA, IDEQ and DOE individually certify that the signatories to this Agreement have the authority to bind their respective agencies to the requirements of this Agreement.

IT IS SO AGREED:

By: 
Michael Gearheard, Director
Office of Environmental Cleanup
Region 10
U.S. Environmental Protection Agency

Date: 20 Feb 2003

IT IS SO AGREED:

By: Orville Green Date: 2-21-03
Orville Green, Administrator
Waste Management and Remediation Division
Idaho Department of Environmental Quality

IT IS SO AGREED:

By: Robert M. Stallman

Date: 2-20-03

Robert M. Stallman
Acting Assistant Manager
Environmental Management
U.S. Department of Energy
Idaho Operations Office